

Sharon Moore

From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Monday, August 17, 2020 3:10 PM
To: 'Jonathan Schwalb'; Chambers_of RG
Cc: dstevens_scura.com; Charlene Richardson; artis@USDOJ.gov
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461: Counter-Proposed Order Re. August 11, 2020

Good afternoon:

To set the record straight for tomorrow's hearing:

SC's counsel alleges that his papers include terms "agreed on a conference call with the parties". My office, counsel to co-owner Diane Mauriello and certainly a party, never participated in such a call, as clearly reflected in counsel's proposed papers by no mention whatever of Dr. Mauriello as a party or my office as her counsel.

SC and debtor's counsel negotiated a proposed order which was then sent to my office for review and comment. By email I sought to negotiate my differences with SC's counsel amicably, but unsuccessfully, after which he chose to involve the Court, which then scheduled tomorrow's hearing. To avoid a critique of counsel's document at the hearing, I thought the Court would instead appreciate the counter-proposed order conveyed earlier today as the clearest reflection of co-owner's position.

Regards,

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45 Broadway, Suite #1420
New York, NY 10006
Phone: (212) 363 – 8400 | Fax: (212) 825 – 1440
<http://www.ftaddeolaw.com>
Member NY, NJ Bars

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From: Jonathan Schwalb [mailto:jschwalb@friedmanvartolo.com]
Sent: Monday, August 17, 2020 12:14 PM
To: Frank Taddeo; 'Chambers_of RG'
Cc: 'dstevens_scura.com'; 'Charlene Richardson'; artis@USDOJ.gov
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461: Counter-Proposed Order Re. August 11, 2020

Good morning,

This proposed form of order is not accepted by the Secured Creditor. The terms were agreed on a conference call with the parties as directed by this Court and that is what my proposed order was 100% based on. This proposed order is a complete deviation from those terms and therefore cannot be agreed to.

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
— L L P —

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From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Monday, August 17, 2020 12:10 PM
To: 'Chambers_of RG' <chambers_of_rg@njb.uscourts.gov>; Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Cc: 'dstevens_scura.com' <dstevens@scura.com>; 'Charlene Richardson' <Charlene_Richardson@njb.uscourts.gov>; artis@USDOJ.gov
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461: Counter-Proposed Order Re. August 11, 2020

Respectfully submitted for consideration is a counter-proposed order reflecting the Court's decision at the August 11, 2020 hearing on the secured creditor's motion for stay relief.

Regards,

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From: Chambers_of RG [mailto:chambers_of_rg@njb.uscourts.gov]
Sent: Thursday, August 13, 2020 11:17 AM
To: Jonathan Schwalb; Chambers_of RG; Frank Taddeo
Cc: dstevens_scura.com; Charlene Richardson
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Thank you ,, All matters on this case will be by court solutions on Aug. 18, 2020 @ 11:30. The court needed all email on the docket today .

Thanks again

Sharon Moore
Courtroom Deputy for the Honorable Rosemary Gambardella
Sharon_Moore@njb.uscourts.gov
(973) 645-4763



From: Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Sent: Thursday, August 13, 2020 11:06 AM
To: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Cc: dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Hi Sharon,

Do you want my office to docket a letter? What time will the hearing be?

Thank you,

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
LLP

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From: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>
Sent: Thursday, August 13, 2020 9:10 AM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; Chambers_of RG <chambers_of_rg@njb.uscourts.gov>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Cc: dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

The court needed all email on the docket before noon Today.

Thank you

Sharon Moore
Courtroom Deputy for the Honorable Rosemary Gambardella
Sharon_Moore@njb.uscourts.gov
(973) 645-4763



From: Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Sent: Thursday, August 13, 2020 9:09 AM
To: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Cc: dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Anytime after 11:30am works for me.

Thank you,

Jonathan Schwalb, Esq.
Associate

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— L L P —

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From: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>
Sent: Thursday, August 13, 2020 9:05 AM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; Chambers_of RG <chambers_of_rg@njb.uscourts.gov>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Cc: dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

I will speak with Chamber today. What time is good for all parties?

Sharon Moore
Courtroom Deputy for the Honorable Rosemary Gambardella
Sharon_Moore@njb.uscourts.gov
(973) 645-4763



From: Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Sent: Thursday, August 13, 2020 8:31 AM
To: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Cc: dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Good morning,

I am before Judge Sherwood on another matter at that time. Is it possible to have the hearing later in the day?

Jonathan Schwalb, Esq.
Associate

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— LLP —

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From: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>
Sent: Thursday, August 13, 2020 8:04 AM
To: Frank Taddeo <FTaddeo@FTaddeolaw.com>; Chambers_of RG <chambers_of_rg@njb.uscourts.gov>
Cc: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; dstevens_scura.com <dstevens@scura.com>
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Good Morning,
The court has schedule this matter for Tuesday August 18, 2020 @ 10 am

Sharon Moore
Courtroom Deputy for the Honorable Rosemary Gambardella
Sharon_Moore@njb.uscourts.gov
(973) 645-4763



From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Wednesday, August 12, 2020 5:52 PM
To: Chambers_of RG <chambers_of_rg@njb.uscourts.gov>
Cc: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; dstevens_scura.com <dstevens@scura.com>
Subject: FW: In Re Tosca Kinchelow Schmidt, Case 18-24461

Dear Judge Gambardella:

After first resolving the matter with my client, Dr. Mauriello, I informed Mr. Schwalb that the first adequate protection payment date, August 15, was acceptable (per the above attachment).

All other recommendations in my earlier email to the Court below, including the additional 30-day extension to each deadline, still stand for its consideration. The extra time built in the schedule prejudices the Secured Creditor very little if at all.

The "flood" of correspondence to the Court Mr. Schwalb now describes (and he commenced) could have all been avoided with a simple call to my office number below.

Thank you.

Respectfully, F. Taddeo

P.S., My apologies for the misidentification in the earlier email. "Judge Cannon" is a fine Judge in the U.S. District Court for the Northern District of Georgia before whom my office is currently litigating a stockholder derivative action.

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From: Jonathan Schwalb [<mailto:jschwalb@friedmanvartolo.com>]
Sent: Wednesday, August 12, 2020 4:21 PM
To: Frank Taddeo; chambers_of_rg@njb.uscourts.gov
Cc: David Stevens
Subject: RE: In Re Tosca Kinchelow Schmidt, Case 18-24461

Your Honor,

Again, I do not wish to flood chambers' inbox, but the facts are Mr. Stevens and I held a conference call to discuss the terms of the Order pursuant to yesterday's hearing. My understanding is that Mr. Taddeo advised Mr. Stevens to handle the call on his behalf. Counsel and I came to terms, the Order was drafted and agreed to, prompting me to submit to chambers for entry.

If the Court wishes to hold a hearing on this, that is acceptable but I do not feel it is necessary considering the events that I stated above here. Furthermore, it should be noted that Mr. Taddeo's email below discusses a change to the terms wherein the Debtor and Co-Owner would not be required to make an adequate protection payment until 9/15/20, when the parties agreed to 8/15/20. Even Mr. Taddeo himself notes this in the attached email.

Based on the agreement on the conference call, we believe the attached Order should be entered.

Respectfully submitted,

Jonathan Schwalb, Esq.
Associate

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From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Wednesday, August 12, 2020 3:58 PM
To: [chambers of rg@njb.uscourts.gov](mailto:chambers_of_rg@njb.uscourts.gov)
Cc: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; David Stevens <dsteven@scura.com>
Subject: FW: Schmidt Order

Dear Judge Cannon:

Below is my last email to Mr. Schwalb regarding the proper wording of Your Honor's Order memorializing your Decision at yesterday's hearing on the Secured Creditor's Motion. We believe the changes we suggested are perfectly reasonable and ask that they be adopted – especially in the middle of a covid pandemic.

As for substitution for the word “standing” that is mentioned, namely “rights”, we believe the Court intended to remain neutral on the issue by simply invoking the Rooker-Feldman doctrine and its platform below, the Superior Court Default Judgment. Your Honor made no separate finding that the Creditor had standing to bring the Motion, only that Mauriello, because of Rooker-Feldman, was barred from proving that standing was lacking. Mr. Schwalb's attempt to shoehorn the word into your Order for the Secured Creditor's personal benefit is unseemly and should be rejected.

Thank you.

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From: Frank Taddeo [<mailto:FTaddeo@FTaddeolaw.com>]

Sent: Wednesday, August 12, 2020 2:51 PM

To: 'Jonathan Schwalb'

Cc: David Stevens (dsteven@scura.com)

Subject: RE: Schmidt Order

I am advised that Drs. Mauriello and Schmidt have both been furloughed from their professional positions, with Dante Resources and the Veterans Administration respectively, and are currently experiencing considerable financial hardship, primarily covid related. Dr. Schmidt has the additional hardship of a recovery from major surgery for an obstructed bowel she experienced a few weeks back.

Accordingly, we need to add one additional month to each of the dates in your proposed order, beginning with the initial payment date – from August 15, 2020, three days from now, to September 15, 2020, etc.

Your layman language on a “firm date” for performance must be altered to the legal “time of the essence” date.

Finally, the word “standing” in your last ORDERED paragraph must be replaced with “rights”. Yesterday the Court made no decision on your client’s standing; it simply recited Rooker-Feldman in rejecting the Mauriello sur-reply to the motion to vacate. You prevailed by “default” not merits.

We will refer these matters to the Judge for disposition if you do not consent to these reasonable changes.

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From: Jonathan Schwalb [<mailto:jschwalb@friedmanvartolo.com>]

Sent: Wednesday, August 12, 2020 12:49 PM

To: Frank Taddeo

Cc: David Stevens

Subject: RE: Schmidt Order

Please see attached. I will be submitting this to chambers this afternoon.

Thank you,

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
LLP

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From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Tuesday, August 11, 2020 5:26 PM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Cc: David Stevens <dstevens@scura.com>
Subject: RE: Schmidt Order

Better than “drop dead” but devoid of legal meaning. “Time is of the essence” is an age-old term of art in real estate law (which yours truly has done plenty of). Google the definition. It is the appropriate expression here.

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From: Jonathan Schwalb [<mailto:jschwalb@friedmanvartolo.com>]
Sent: Tuesday, August 11, 2020 4:43 PM
To: Frank Taddeo; 'David Stevens'
Cc: 'David Stevens'
Subject: RE: Schmidt Order

How about “firm final date for the closing to occur”

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
LLP

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From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Tuesday, August 11, 2020 4:41 PM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; 'David Stevens' <dsteven@scura.com>
Cc: 'David Stevens' <dsteven@scura.com>
Subject: RE: Schmidt Order

Disagree – lawyers, not undertakers.

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From: Jonathan Schwalb [<mailto:jschwalb@friedmanvartolo.com>]
Sent: Tuesday, August 11, 2020 4:37 PM
To: Frank Taddeo; 'David Stevens'
Cc: David Stevens
Subject: RE: Schmidt Order

You mean the “drop dead” date? I believe that should stay in as is, it is language that I know other Judges have agreed to in other cases (Gravelle specifically), and it does not leave much ambiguity.

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
— L L P —

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From: Frank Taddeo <FTaddeo@FTaddeolaw.com>
Sent: Tuesday, August 11, 2020 4:35 PM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; 'David Stevens' <dsteven@scura.com>
Cc: David Stevens <dsteven@scura.com>
Subject: RE: Schmidt Order

Checking dates with my client. How about “time of the essence” closing date instead of “DOA”?

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From: Jonathan Schwalb [<mailto:jschwalb@friedmanvartolo.com>]
Sent: Tuesday, August 11, 2020 2:21 PM
To: David Stevens; Frank Taddeo
Subject: RE: Schmidt Order

David,

How about the attached?

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
LLP

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From: David Stevens <dsteven@scura.com>
Sent: Tuesday, August 11, 2020 2:14 PM
To: Jonathan Schwalb <jschwalb@friedmanvartolo.com>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Subject: RE: Schmidt Order

Jonathan,

Can you remove the reference to the parties agreeing to standing. You may assert that the court made that finding, but not that we agreed.

Yours Truly,

David L. Stevens, Esq.
Tel: (201) 490-4777
Fax: (201) 490-4778
dstevens@scura.com

"The highest compliment we can receive is a referral from you. Thank you for your trust!"



From: Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Sent: Tuesday, August 11, 2020 1:57 PM
To: David Stevens <dstevens@scura.com>; Frank Taddeo <FTaddeo@FTaddeolaw.com>
Subject: RE: Schmidt Order

Counsel,

Please advise if the attached Order, pursuant to the conversation earlier today between myself and Mr. Stevens is acceptable to submit to chambers.

Thank you,

Jonathan Schwalb, Esq.
Associate

FRIEDMAN VARTOLO
LLP

85 Broad St., Suite 501 | New York, NY 10004
Direct: (646) 586-9789 | Fax: (212) 471-5150
friedmanvartolo.com

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From: David Stevens <dstevens@scura.com>
Sent: Tuesday, August 11, 2020 12:24 PM
To: Frank Taddeo <FTaddeo@FTaddeolaw.com>; Jonathan Schwalb <jschwalb@friedmanvartolo.com>
Subject: Schmidt Conference

Counsel:

Is 1 pm acceptable?

Dial-In Number:

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Participant Access: 427 625 700

To join the conference on your iOS Device, click this link: <https://rcconf.net/2xaavey>

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To mute your line, press *#6 on your keypad.

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Yours Truly,

David L. Stevens, Esq.

Tel: (201) 490-4777

Fax: (201) 490-4778

dstevens@scura.com

